

## DISTRICT OF NEVADA

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Before the court is defendant James Londo's Motion to Vacate under 28 U.S.C. § 2255 (#343). The United States of America has responded (#349) following the court's order directing a response, and Londo has replied (#352).

## **I. Facts and Procedural History**

Londo was convicted by a jury on August 5, 2008, of conspiracy with intent to distribute methamphetamines. Londo had originally pleaded guilty, but he fought a two-year battle to withdraw his guilty plea in order to present evidence of sentencing entrapment at trial. He was unsuccessful: the court sentenced Londo to a twenty-year mandatory minimum, and the period of direct review terminated on October 4, 2010. On August 23, 2012, Londo moved to vacate, set aside, or correct his sentence under § 2255.

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1     **II.     Discussion**

2             Londo bases his motion on an ineffective-assistance-of-counsel claim, in which he alleges  
3     that his trial counsel failed to inform him of a plea offer by the government in July 2008. He  
4     brought his motion more than one year after his judgment of conviction became final. *Clay v.*  
5     *United States*, 537 U.S. 522, 525 (2003). Accordingly, Londo’s motion would normally be time-  
6     barred under § 2255(f). However, Londo asks for relief from § 2255’s one-year statute of  
7     limitations by asserting that the right on which he relies—a right of the accused to have plea  
8     agreements communicated to him by his counsel, *Missouri v. Frye*, 132 S. Ct. 1399 (2012)—is  
9     “newly recognized” and was “made retroactive to cases on collateral review.” 28 U.S.C. §  
10    2255(f)(3).

11            Londo is incorrect. “[N]either *Cooper* nor *Frye* announced a new rule of constitutional  
12    law.” *Williams v. United States*, 705 F.3d 293, 294 (8th Cir. 2013) (citing *Buenrostro v. United*  
13    *States*, 697 F.3d 1137, 1140 (9th Cir. 2012)). Rather, *Frye* “merely applied the Sixth Amendment  
14    right to effective assistance of counsel according to the test articulated in *Strickland v. Washington*,  
15    466 U.S. 668, 686 (1984).” *Buenrostro*, 697 F.3d at 1140. Furthermore, the Supreme Court itself  
16    emphasized that it was merely applying *Strickland* in *Frye*, not breaking new ground. *Id.* See also  
17    *In re King*, 697 F.3d 1189 (5th Cir. 2012); *Hare v. United States*, 688 F.3d 878, 879-80 (7th Cir.  
18    2012); *In re Perez*, 682 F.3d 930, 932-34 (11th Cir. 2012). Since Londo has had an opportunity to  
19    respond, dismissal on the grounds of untimeliness is appropriate. *Day v. McDonogh*, 547 U.S. 198,  
20    210 (2006).

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1 IT IS THEREFORE ORDERED that Londo's Motion to Vacate under 28 U.S.C. § 2255  
2 (#343) is DENIED.

3 IT IS SO ORDERED.

4 DATED this 22nd day of July, 2013.



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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE